

## REMARKS

Claims 1-28 are pending. Claims 11, 12, 17, 24 and 24 are objected to, but would be allowable if rewritten in independent form.

The examiner objects to the use of “shaft” in claims 11 and 12, stating that “peg” should be used for consistency. However, it is “shaft 328” (see page 21, lines 5 et seq.) that is being claimed, and not the peg.

The examiner also objects to the “receiving means” claim 1, stating that it does not have antecedent basis in the specification. The applicant is confused by this objection. Does the examiner intend that there is no support for the “receiving means” or is he intending that the term “receiving means” must be explicitly stated within the body of the specification. If it is the latter, the applicant traverses on the grounds that there is no such requirement, only that some structure having the function of a receiving means be disclosed in the specification; i.e., that there be support for the receiving means. Such support is provided by the subject matter specifically claimed in claims 2 (lateral slots) or 4 (a sleeve).

Claim 28 has been amended to correct the error in consistency noted by the examiner. Claims 3 and 18 have been amended to be more definite. Regarding such claims, the examiner is referred to Fig. 5 and page 16, lines 4-19 for more information regarding the non-radial slots. Claim 15 has been amended to correct an antecedent basis problem.

Claims 1-10, 13 and 14 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Pat. No. 6,706,046 to Orbay. Claim 1 has been amended to be directed to the embodiment of Figs. 5-17; i.e. the jig with lateral slots 216, 218, 220 entering into the holes 210, 214, 216 such that a drill bit can be maneuvered laterally (in addition to longitudinally) into and out of the holes and operated without a drill sleeve. More specifically, claim 1 has been amended to state that the first portion of the jig includes “a plurality of lateral slots extending into said longitudinally displaced holes through which a drill bit can be laterally entered into said holes.” Orbay fails teach any jig with such slots. Clearly, the slots 164 in screws 28 are not slots in the jig which permits a drill bit to laterally enter the holes.

Regarding the claimed depth gauge, the examiner states that “Applicant does not shown any depth gauge.” This is not at all understand. A significant portion of the specification is dedicated to describing novel depth gauges 304, 304a, shown in Figs. 15-17 and described in detail at pages 21-24.

Claims 1-8, 10, 13, 14, 16, 18-23 and 26 stand rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Pat. No. 6,514,253 to Yao. The applicant traverses the rejections as Yao fails to teach or suggest the claimed invention for the following reasons.

First, Yao does not provide the “*lateral slots extending into said longitudinally displaced holes through which a drill bit can be laterally entered into said holes.*” The

examiner has referenced component 40 with center hole. Clearly, this does not read on the lateral slots in holes in the first portion of the jig, and such are definitely not adapted to laterally receive drill bits. Moreover, the slots identified by the examiner are *all radial* relative to the hole 42.

Second, Yao fails to teach or suggest a drill guide for the *second portion* of the jig.

Third, Yao does not teach or suggest the use of the claimed gauge. The drill bit is not a gauge.

Regarding claim 10, Yao does not teach or suggest a gauge means which “measures said depth of said hole relative to an anatomical structure.”

Fourth, regarding claim 13-15, element 36 is not a drill sleeve but rather a solid “guide rod”. It can not receive a drill bit. Threaded rod 77 cannot correspond to the claimed bearing, as it has no bore axial with the passage. The examiner is referred to Figs. 9 and 10 of the applicant’s specification for clarification on the component that is being claimed. Yao fails to teach or suggest any similar component or the claimed arrangement of elements.

Regarding claims 19 and 20, such are directed to openings 214, 215 (Fig. 6) in the second portion of the jig. Yao shows no similar structure on his jig.

Regarding, claims 21 and 22, Yao fails to teach or suggest a guide with the claimed distal and proximal *tubular* portions. Element 21, which the examiner states corresponds to proximal tubular portion, in fact, is not tubular. See Fig. 2. It is a cylindrical rod with transverse holes, but includes no longitudinal bore which would make it tubular. In addition, claim 21 requires that the drill bit to have a stepped diameter with a proximal portion “sized to function as a stop against said upper surface of said rigid member.” As clearly shown in Fig. 7 of Yao, the drill bit shown in dashed lines is uniform in diameter having no proximal portion which functions as a stop against member 10. Furthermore, claim 21 has also been amended for clarity to state that the proximal tubular portion is coaxial with said distal tubular portion, but, for the reasons provided above, such is not required to define over the cited art.

Claim 23 requires a bridge portion which is laterally offset relative to a longitudinal axis extending through said proximal and distal tubular portions. As discussed above, the examiner has not properly identified a proximal tubular portion as portion 21 is an expandable rod and there is no longitudinal axis which extends through both the proximal and distal “tubular” portions. Further, “bridge portion” 22 identified by the examiner does not “rigidly [couple] said proximal and distal tubular portions”, but is simply a fitting hole. Element 314 in Figs. 9 and 10 of the specification correspond to the claimed bridge.

Claim 26 requires a “means for preventing said guide from rotating relative to said rigid member when said drill bit is rotated.” See Spec. at page 20, lines 8-11:

“The placement of a portion of the bridge 314 within a slot 216, 218, 220 of the jig 202 prevents the guide 300 from rotating relative to the jig when the drill bit 260 is rotated.”

The examiner states such means are met by the friction between the hole and tubular member 21. However, this does not equate to a means disclosed in the specification or its equivalent.

In accord with MPEP § 2183 in order for an element to meet a means-plus-function claim limitation, that element must:

- (A) perform the function specified in the claim,
- (B) not be excluded by any explicit definition provided in the specification for an equivalent, and
- (C) be an equivalent of the means- (or step-) plus-function limitation.

Factors that support a conclusion that a prior art element is an equivalent are:

(A) the prior art element performs the identical function specified in the claim in substantially the same way, and produces substantially the same results as the corresponding element disclosed in the specification,

(B) a person of ordinary skill in the art would have recognized the interchangeability of the element shown in the prior art for the corresponding element disclosed in the specification,

(C) there are insubstantial differences between the prior art element and the corresponding element disclosed in the specification, or

(D) the prior art element is a structural equivalent of the corresponding element disclosed in the specification.

First, there is no teaching in Yao of the amount, if any, friction between the hole and member 21. Second, such elements (A) do not perform an identical function in substantially the same way to produce the same result to the elements disclosed in the specification, (B) are not interchangeable, (C) are substantially different, and (D) are structurally non-equivalent.

For the foregoing reason, the structure identified in Yao is not equivalent to the means-plus-function claim limitation in claim 26.

Claim 27 stands rejected under 35 U.S.C. § 102(e) as anticipated by U.S. Pat. No. 6,692,496 to Wardlaw. The applicant traverses the rejection for the following reasons.

Claim 27 requires an orthopedic implant with a plate portion. The meaning of a “plate” as relatively flat implant which is positioned on the exterior of a bone surface is well-known. For clarity, claim 27 has been amended. The Wardlaw reference teaches only an intramedullary rod and fails to teach any implant with a relatively flatter plate portion. In addition, the claim requires that portions of the implant be vertically displaced. While portions of the Wardlaw rod are bent, they are not displaced; i.e., such that a longitudinal lines through each portion will have no points in common. The he claim also requires a jig with vertically displaced portions. For similar reasons, Wardlaw

also fails to teach this. In addition, the portion of the Wardlaw jig which the examiner sites as the second portion is never seated on a plate portion of the implant, as required by the claim. For the foregoing reasons, the claim is allowable over the art of record.

In light of all of the above, it is submitted that the claims are in order for allowance, and prompt allowance is earnestly requested. Should any issues remain outstanding, the Examiner is invited to call the undersigned attorney of record so that the case may proceed expeditiously to allowance.

Respectfully submitted,



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